

AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

33RD MEETING OF THE PARTIES

LA JOLLA, CALIFORNIA (USA)
20 JUNE 2016

DOCUMENT MOP-33 INF-A REV.1

SUBMITTED BY THE EUROPEAN UNION

RATIONALISATION OF AIDCP MEETINGS

1. BACKGROUND

At the 32nd Meeting of the Parties to the Agreement on the International Dolphin Conservation Program (AIDCP) in October 2015, Parties discussed, on the basis of Document MOP-32 INF-B submitted by the European Union (see Annex 1), the possibility to streamline the AIDCP way of operating, namely by holding only one meeting per year. The objective of this approach would be to reduce expenses for the national administrations and the IATTC Secretariat and further rationalise the way the AIDCP works.

Participants in the 32nd Meeting of the AIDCP Parties generally supported the approach, but considered that it was necessary to envisage an efficient mechanism to allocate Dolphin Mortality Limits (DMLs) as well as ensuring that possible infractions were properly addressed in the time between two International Review Panels (IRP) meetings.

In terms of DMLs allocation, some Parties indicated a preference for maintaining the full year allocation as it currently stands, but switching to a inter-sessional decision making process by correspondence.

Regarding the infractions, some Parties suggested that possible infractions could be notified directly to Parties instead of the IRP in order for them to initiate an investigation or object in a timely manner. The IRP would review the infraction and the investigation at a later stage and could decide to withdraw the infraction from the list.

In conclusion, it was agreed that a new document taking into account the outcome of the discussion, would be prepared for the 33rd Meeting of the Parties in June 2016 as well as the necessary amendments to Annex VII of the AIDCP.

2. DECISION MAKING AND TIMING

Article XII of the AIDCP establishes the IRP, which operates in accordance with the provisions of Annex VII. As per paragraph 5 of Annex VII, the IRP shall meet twice a year. The two main functions of the IRP are, in a nutshell, to propose the allocation of Dolphin Mortality Limits (DMLs) as per Annex IV of the AIDCP and to assess and follow up on the infractions identified in reports from tuna-fishing trips covered by the AIDCP.

3. AMENDMENTS PROPOSED

In order to implement the changes proposed there is a need to amend both the way the DMLs for the second semester are allocated and the role of the IRP regarding infractions.

DMLs allocation

It is proposed that the full year DMLs allocations will be agreed through inter-sessional consultation by correspondence and not in the course of a physical meeting of the Parties. Under this scenario, the Director would circulate to the IRP prior to 1 October of each year the proposed list of eligible vessels for

a full year DML. Decisions will be made in accordance with the procedure referred to in Article 11 of Annex VII of the AIDCP (decision making by correspondence). The final list of eligible vessels will be confirmed by the Director by 1 November.

Second semester DMLs allocation will continue to be decided at the physical meeting of the Parties of the AIDCP in June/July in conjunction with the IATTC ordinary meeting

Infractions

With a view to taking into account concerns expressed during the 32nd of the MOP, the roles of the IRP and of the Secretariat need to be modified in order to avoid that an excessive period of time elapses between the moment a possible infraction is identified and the meeting of the IRP takes place, so that a Party can take timely action against a possible infraction.

Currently, the IRP advises on which possible infractions should be investigated and refers them to the Parties. Depending of the type of infraction, Parties have either 6 or 12 months to object. It is therefore important that Parties are notified in a timely manner.

Instead of the current system, it is therefore proposed that possible infractions identified by the Secretariat after the June meeting of the IRP and before 1 October of each year are notified by the Director to the Parties before 1 November without prior advice by the IRP. Parties will then proceed to investigate those alleged infractions or object in writing. The IRP would review the infraction and the investigation at the meeting to be held in conjunction with the IATTC and could decide to withdraw the infraction from the list.

As a result, the role of the IRP in the following stages of the investigation will not be altered. The IRP will continue to receive the final report of the investigation. The IRP will act as a review and supervision body to which the Parties' investigations are notified. The deadlines regarding the launching of objections and the completion of the investigation will not change.

4. AMENDMENTS TO THE AIDCP

In view of the above it is proposed to introduce a couple of amendments to the AIDCP and its Annexes.

- A. Section III, paragraph 4 of Annex IV should be modified to introduce the new procedure in relation to examination and follow up of infractions as detailed in section 3 above.

“Annex IV

DOLPHIN MORTALITY LIMITS (DMLs)

[...]

III. Use of forfeited or unutilized DMLs

[...]

No vessel may have its initial DML adjusted upward by any Party if the IRP had determined, and the Party with jurisdiction over the vessel concurs, that during that year or the previous two years:

- a. the vessel fished without an observer;

[...].

For infractions described in (a), (b), (c), (d), (f), and (g), a Party will be deemed to have provided such concurrence if it does not object to the IRP within six months of a referral **by the Director or by the IRP** of a possible violation ~~from the IRP~~. For the infraction described in (e), a Party will be deemed to have provided such concurrence if it does not object to the IRP within 12 months of such

referral. The Director will circulate a monthly report on the possible infractions notified to the Parties for investigation.

[...]"

- B. Paragraph 5 of Annex VII should be amended so that the IRP meets once a year instead of twice a year as it is currently the case.

“Annex VII

INTERNATIONAL REVIEW PANEL

[...]

1. The IRP shall hold at least ~~two~~ one meetings a year, ~~one of which will~~ preferably ~~be held~~ on the occasion of the ordinary Meeting of the Parties.

[...]"

ANNEX 1

AGREEMENT ON THE INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

32ND MEETING OF THE PARTIES

La Jolla, California (USA)
20 October 2015

DOCUMENT MOP-32 INF-B

SUBMITTED BY THE EUROPEAN UNION

RATIONALISATION OF AIDCP MEETINGS

BACKGROUND

At the 31st Meeting of the Parties to the Agreement on the International Dolphin Conservation Program (AIDCP) in June 2015, Parties discussed the possibility to streamline the AIDCP way of operating, namely by holding only one ordinary meeting per year. The goal of this approach would be to reduce expenses for the national administrations and the IATTC Secretariat and further rationalise the way the AIDCP works.

Participants at the 31st Meeting of the AIDCP Parties requested additional information to assess the advantages and disadvantages of this option. As a conclusion it was agreed that a discussion document will be prepared for discussion at the 32nd Meeting of the Parties in October 2015.

CURRENT SITUATION

Currently AIDCP meets twice a year. The first meeting usually take place back to back with the IATTC ordinary meeting, usually in June-July, and the second one later in the year, generally in October.

In the current practice the AIDCP meeting consist of four different meetings being held consecutively: the Permanent Working Group on Tuna Tracking (PWGTT), the Working Group to promote and publicize the AIDCP Dolphin Safe Tuna Certification System (Promotion WG), the International Review Panel (IRP) and the Meeting of the Parties to the AIDCP (MOP).

The length of the four AIDCP meetings varies depending on the agenda items. In 2013 and 2014, for example, the Promotion WG addressed promotion initiatives that required more time for discussions than usual. Budget discussions could also entail lengthier discussions. However, under normal circumstances, the four meetings all together do not extend beyond one day and a half. In June 2015 the four meetings were concluded in one day.

LEGAL FRAMEWORK

Article VIII of the AIDCP indicates that the ordinary Meeting of the Parties shall take place at least once a year, preferably in conjunction with the IATTC meeting. It also states that extraordinary meetings can be held at any time as deemed necessary by the Parties.

Article XII of the AIDCP establishes the IRP, which operates in accordance with the provisions of Annex VII. As per paragraph 5 of Annex VII, the IRP shall meet twice a year. The two main functions of the IRP are, in a nutshell, to establish the allocation of Dolphin Mortality Limits (DMLs) as per Annex IV of the AIDCP and to assess and follow up on the infractions identified in reports from tuna-fishing trips covered by the AIDCP. The IRP makes recommendations to the MOP for adoption.

The PWGTT was established by the Parties to the AIDCP in 1999 as a component of the IRP. The purpose of the system is to ensure the dolphin-safe status of tuna harvested in the EPO. The Promotion WG was

established in 2002. This working group seeks to identify means of effectively promoting the scientific and technical aspects of the International Dolphin Conservation Program (IDCP), as well as its conservation successes. Neither this working group nor the PWGTT has any established compulsory dates to meet.

OPTIONS

1.1. Options without revising the current legal system

As seen above, the current system of twice-a-year AIDCP/IRP meetings stems from two different set of provisions established under Annexes IV and VII of the AIDCP and which have the objective to, respectively, allocate DMLs and address possible infractions.

The DML system under Annex IV of the AIDCP consists of full-year DMLs and second-semester DMLs. Requests for the full-year DMLs are to be submitted to the Parties, through the Director, before October 1 of each year. Requests for second-semester DMLs are to be provided prior to April 1 of each year. Then the IRP shall, by November 1 of each year or later if agreed by the IRP, provide to the Parties a list of qualified applicant vessels eligible to receive a full-year DML for the following year. For second-semester DMLs, the IRP shall, by May 1 of each year or later if agreed by the IRP, provide the corresponding list. The second-semester DML was conceived to facilitate access to the DMLs for late entrants. It should be noted that in practice second-semester DMLs are very rarely used.

The provisions of Annexes IV and VII of the AIDCP require that the IRP, and therefore the Meeting of the Parties in order to receive any recommendation from the IRP, meet at least twice a year. Therefore, under the current legal system there is no possibility to remove the second AIDCP meeting.

On the other hand, there would be no legal constraints to hold a single yearly meeting for the PWGTT and the Promotion WG.

Given the above, the only flexibility allowed by the current system is in terms of timing and length of the second AIDCP meeting. It would be legally feasible, for example, to convene the PWGTT and the Promotion WG only once a year, and in this way reduce the length of the second AIDCP meeting, which could consist only of one day meeting of the IRP and the MOP.

Advantages and disadvantages

While this option has the advantage that the current working system of the IRP on infractions and DMLs allocation would not be altered, it has very limited benefits in terms of efficiency and cost savings.

Maintaining the second AIDCP meeting but reducing its length to one day, provides some cost savings in terms of IATTC staff, meeting rooms and hotel expenses for participants, but those are negligible, as it would still require for parties to meet a second time in the year, with all associated travel costs and days of absence of staff of the national administrations of the participating Parties.

1.2. Options implying a revision of the current legal system

As per Article XXX of the AIDCP, any amendment to the AIDCP annexes can be done by consensus of the MOP. Unless otherwise agreed, amendments to an Annex enter into force for all Parties upon their adoption. Therefore, as ratification is not necessary to amend an Annex to the AIDCP, from a legal point of view it would be straightforward to modify the current system in order to convene the AIDCP only once a year in conjunction with the ordinary IATTC annual meeting.

If Annex IV and paragraph 5 of Annex VII were amended so that the IRP meets only once a year, two options would be possible:

1.2.1. Yearly DML allocation

The first option would be to move the allocation of the full-year DMLs forward so that the decision is taken at the IATTC annual meeting before the summer. The decision on the full-year DML allocation would be taken by a given date, for example by 1 August, of the preceding year on the understanding that the AIDCP meetings will be in conjunction with the IATTC and that the IATTC would meet somewhere between mid-

June and early- to mid-July. The DML requests would be submitted in advance of the Annual meeting, for example, by 1 May.¹

The second-semester DML allocation system would remain unchanged.

As far as the assessment and follow up of possible infractions is concerned, the IRP would also meet only once a year in conjunction with the annual meeting.

Advantages and disadvantages

The clear advantage of this option would be the rationalisation of the way the AIDCP works and the savings achieved for the national administrations and the IATTC Secretariat in terms of time, money and resources.

A disadvantage of this option is that it is difficult to assess to what extent the vessel owners will be able to anticipate their needs for a full-year DML so far in advance. However, in order to accommodate the possibility of full-year DML requests being submitted at a later stage, a possible solution could be to utilize Reserve DML Allocation (RDA) in line with Paragraph 8 of Annex IV. In addition, the percentage of the RDA could be increased, for example, from 2% to 5%.

Another disadvantage of this proposal is that the IRP would only meet once for the review and follow-up of possible infractions.

However, in recent years infractions were very low in number and they were the exception rather than the rule. In practical terms, as far as the follow-up is concerned, experience has shown that little progress is reported at the second IRP meeting for infractions that have been discussed at the first IRP meeting since the time between the two is rather short. Nevertheless, the fact that possible infractions are discussed at the second AIDCP meetings helps to keep the pressure on the Party to see a thorough follow-up.

Having said this, a possible solution to maintain the same level of follow-up as it is now, would be that Parties report in writing of the follow-up of the possible infractions, for example, every six months.

There could also be cases where due to the circumstances observer data is not received in time for the first IRP meeting. In that case possible infractions could only be assessed the year later and as late as 18 months after the actual event took place. However these cases are extremely rare.

It should also be noted that on the basis of IATTC Resolution C-11-07 on compliance, the Committee for the Review of Implementation of Measures Adopted by the Commission also only meets once a year to assess possible instances of non-compliance and its follow-up and this does seem to cause any particular concern.

1.2.2. Intersessional DML allocation

Another option would be to maintain the current timing for request and approval for full-year DMLs, and then conduct the review and approval process for the second-semester DMLs via correspondence each fall.

In order to do so, the AIDCP rules should be amended in order to allow for an intersessional decision making process like the one used by the IATTC.

Under this scenario, the work of the IRP in forwarding the list of eligible vessels to the MOP could be done via correspondence and then the MOP could also take an intersessional decision to approve the list of vessels eligible to receive DMLs.

However, under this option, the IRP assessment of possible infractions will also only happen once a year in conjunction with the IATTC annual meetings.

Advantages and disadvantages

The main advantage of this option is that it would still allow for considerable savings in terms of time and costs, like in the previous option, as the physical meeting of the Parties would only take place once a year. In

¹ Another option could be that the system run from 1 September of a given year to 31 August of the following year but the decision on the allocation is still taken by 1 August.

addition, it would entail minimal legal changes to the current system and very few alterations to the process of allocation of DMLs.

However the same disadvantages on having a single yearly IRP meeting, as in option 4.2.1, remain.

CONCLUSION

On the basis of the different options presented above, it appears that maintaining the AIDCP second meeting and reducing it to one day does not present any real improvement to the current situation in terms of major cost/time savings and further rationalization of the work of the AIDCP.

On the other hand, reducing the AIDCP meetings to once a year has the clear advantage of reducing costs for the IATTC Secretariat, its staff and the AIDCP Parties in terms of meeting and travel costs, and days of absence from the national administration.

The possible disadvantages in terms of DML allocation and assessment and follow-up of possible infractions can be addressed with the solutions described above in order to minimize legal changes and guarantee that the AIDCP maintains its efficiency.